

DANNIS WOLIVER KELLEY
115 PINE AVENUE, SUITE 500
LONG BEACH, CA 90802

1 Sue Ann Salmon Evans, State Bar No. 151562
sevans@DWKesq.com
2 Keith A. Yeomans, State Bar No. 245600
kyeomans@DWKesq.com
3 DANNIS WOLIVER KELLEY
115 Pine Avenue, Suite 500
4 Long Beach, CA 90802
Telephone: 562.366.8500
5 Facsimile: 562.366.8505

6 David R. Holmquist, State Bar No. 179872
david.holmquist@lausd.net
7 LOS ANGELES UNIFIED SCHOOL DISTRICT
OFFICE OF GENERAL COUNSEL
8 333 S. Beaudry Avenue, 24th Floor
Los Angeles, CA 90017
9 Telephone: 213.241.6601
Facsimile: 213.241.8444

10 Attorneys for Plaintiff-Intervenor
11 Los Angeles Unified School District

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15
16 STATE OF CALIFORNIA, et al.,
17 Plaintiffs,
18 v.
19 WILBUR L. ROSS, JR., et al.,
20 Defendants.

Case No. 3:18-cv-01865-RS

**LOS ANGELES UNIFIED SCHOOL
DISTRICT'S NOTICE OF JOINDER AND
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Judge: Hon. Richard Seeborg
Courtroom: 3
Date: December 7, 2018
Time: 10:00 a.m.

21
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23 Complaint filed March 26, 2018
First Amended Complaint filed May 4, 2018

24 Trial date: January 7, 2019
25

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1 TO THE COURT, PARTIES, AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that plaintiff-intervenor Los Angeles Unified School District
3 (“LAUSD” or “District”) respectfully joins in all arguments, evidence, and objections set forth in
4 plaintiffs’ State of California, County of Los Angeles, City of Los Angeles, City of Fremont, City
5 of Long Beach, City of Oakland, and City of Stockton’s (collectively, “Plaintiffs”) opposition to
6 defendants Wilbur L. Ross, Jr., United States Department of Commerce, Ron Jarmin, and United
7 States Census Bureau’s (collectively, “Defendants”) motion for summary judgment (ECF#89)
8 filed on May 4, 2018.

9 LAUSD’s claims in this litigation are substantially identical to Plaintiffs’ claims. In the
10 interest of judicial economy and to avoid redundancy and undue burden, LAUSD joins in
11 Plaintiffs’ opposition papers to Defendants’ motion for summary judgment. In the accompanying
12 Memorandum of Points and Authorities, LAUSD addresses individual issues relating to
13 LAUSD’s standing.

14 DATED: November 16, 2018

DANNIS WOLIVER KELLEY
SUE ANN SALMON EVANS
KEITH A. YEOMANS

15
16 By: /s/Sue Ann Salmon Evans
17 SUE ANN SALMON EVANS
18 Attorneys for Plaintiff-Intervenor
19 Los Angeles Unified School District
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LONG BEACH, CA 90802

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

To establish standing, Los Angeles Unified School District (“LAUSD” or “District”) need only demonstrate a substantial risk of losing *any* amount of federal education funding as a result of Defendants’ decision to add the citizenship question to the 2020 decennial census. The Census Bureau’s own records establish that addition of the citizenship question to the 2020 decennial census will result in a differential non-response rate among households with at least one non-citizen of 5.1% and 5.8%. These households, numbering in the millions, are not evenly distributed across socio-economic subgroups, and disproportionately consist of immigrant, Hispanic, and other minority communities. The reason is obvious—fear that federal government officials will (mis)use their citizenship responses information in a potential immigration actions against their loved ones. This fear has been well-recognized and documented by Census Bureau officials for decades. To preserve the integrity of the enumeration, the Census Bureau has opposed (and continues to oppose) addition of a citizenship question.

Defendants take the untenable position that the Census Bureau’s Non-Response Follow Up (“NRFU”) procedures will recapture the millions of households that do not self-respond directly resulting from the inclusion of a citizenship question. But the Census Bureau acknowledges that NRFU has always struggled to enumerate individuals in the hard to count subpopulations most affected by the inclusion of a citizenship question. All available evidence supports the conclusion that the Census Bureau’s efforts will be unsuccessful and will result in a differential, net undercount of the affected communities. It is irrelevant that, by law, responding to the census is mandatory and that individual responses are confidential. Even assuming undocumented individuals were familiar with these laws, which strains credulity, their fear of deportation or other adverse immigration action far outweighs their concerns with the decennial census. The current Administration’s aggressive immigration policies and rhetoric has only heightened fears within the impacted communities. The Census Bureau’s follow up efforts and outreach activities will face the same recalcitrance that will inevitably lead millions of households to not respond to the 2020 decennial census in the first instance.

1 LAUSD is the second largest and perhaps most diverse school district in the country and
 2 is home to the same communities adversely and disproportionately impacted by the addition of a
 3 citizenship question. The District receives hundreds of millions in federal education funding tied
 4 directly to Census data. Any differential undercount of immigrant or Hispanic subpopulations
 5 will have a disproportionate impact on the District's funding. This substantial risk of lost federal
 6 funding confers Article III standing on LAUSD.

7 **II. LAUSD HAS ARTICLE III STANDING**

8 To establish Article III standing, “a plaintiff must show (1) it has suffered an ‘injury in
 9 fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or
 10 hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it
 11 is likely, as opposed to merely speculative, that the injury will be redressed by a favorable
 12 decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81
 13 (2000). An injury is particularized where it “affect[s] the plaintiff in a personal and individual
 14 way.” *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540, 1548 (2016). A concrete injury must be “‘real,’
 15 and not ‘abstract.’” *Id.* at 1449. Where a plaintiff's injuries are economic, the loss of a single
 16 dollar constitutes an injury in fact. *Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir.
 17 2017).

18 In the context of future injuries, it is sufficient for a plaintiff to establish a “risk of real
 19 harm.” *Spokeo*, 136 S. Ct. at 1548. Whether an alleged future injury is imminent “is
 20 concededly a somewhat elastic concept.” *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409
 21 (2013). While “[a]llegations of *possible* future injury’ are not sufficient,” neither is a plaintiff
 22 required to “demonstrate that it is literally certain that the harms they identify will come about.”
 23 *Clapper*, 568 U.S. at 409 & 414 n.5; see also *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334,
 24 2341 (2014). Along this continuum, it is sufficient to demonstrate a reasonable and substantial
 25 risk of real harm. *Id.*

26 In a case with multiple plaintiffs, standing for all plaintiffs is satisfied so long as any
 27 single plaintiff establishes standing. See *Centro de la Comunidad Hispana de Locust Valley v.*
 28 *Town of Oyster Bay*, 868 F.3d 104, 109 (2d Cir. 2017).

1 **A. Addition of the Citizenship Question Creates a Reasonable and Substantial**
 2 **Risk of a Differential Undercount Disproportionately Impacting LAUSD**

3 **1. A Differential Decline in Self-Response Rate to the 2020 Decennial**
 4 **Census Will Result from the Inclusion of a Citizen Question**

5 Defendants incorrectly suggest there is some dispute as to whether the act of adding a
 6 citizenship question to the 2020 census will result in a differential decline in initial self-response
 7 rates. Defendants’ Motion for Summary Judgment (“MSJ”) at 6, lines 12-14. But there is no
 8 *evidentiary dispute* on this point. In its initial analysis of the Department of Justice’s request to
 9 include a citizenship question, the Census Bureau compared the 2010 decennial census data with
 10 the 2010 American Community Survey (“ACS”) data and determined “the decline in self
 11 response was 5.1 percentage points greater for noncitizen households than for citizen
 12 households.” AR 1280; see also, AR 1311 (“inclusion of a citizenship question on the 2020
 13 Census questionnaire is very likely to reduce the self-response rate”). After additional time to
 14 consider the issue, the Census Bureau increased its estimate to a projected 5.8 percent decline in
 15 self-response rate among households with one or more non-citizens. Evans Decl., ¶ 3 & Exh. A
 16 [COM_DIS00009871]. This roughly translates to between 0.6 to 2.1 million U.S. households.
 17 MSJ, Exh. A [Abowd Decl.] at ¶ 69. According to the Census Bureau itself, millions of
 18 households will not self-respond if the citizenship question is added.

19 **2. The Citizenship Question Impacts Some Subpopulations More than**
 20 **Others**

21 Differential undercounts in the decennial census persist among several subpopulations.
 22 “Since at least 1940, the Census Bureau has thought that the undercount affects some racial and
 23 ethnic minority groups to a greater extent than it does whites.” *Wisconsin v. City of New York*,
 24 517 U.S. 1, 7 (1996); see also, Evans Decl., ¶ 4, Exh. B [2010 Census Coverage Memo] at 15.
 25 The expected decline in self-response rate resulting from the addition of the citizenship question
 26 will, as one may reasonably expect and the Census Bureau recognizes, impact immigrant
 27 communities more than others. Significant disparate impacts are seen in minority communities,
 28 particularly the Hispanic community. The ACS break off rate (i.e., the rate at which an individual
 discontinues the ACS survey during any particular question) for the citizenship question was nine

1 times higher for Hispanics as compared to Whites. AR 1281. Even more concerning, this
 2 disparity appears to be getting worse during the current Administration. After comparing the
 3 2013 ACS data with the 2016 ACS data, the Census Bureau acknowledged that the Hispanic
 4 subpopulation has demonstrated an *increase* in item non-response rate to the citizenship question.
 5 AR 1280. The Census Bureau further acknowledges that its estimates are “conservative” and that
 6 “the differences between citizen and noncitizen response rates and data quality will be amplified
 7 during the 2020 Census compared to historical levels. Hence, the decrease in self-response for
 8 citizen households in 2020 could be much greater than the 5.1 percentage points we observed
 9 during the 2010 Census.” AR 1282.

10 **3. The 2020 Non-Response Follow Up Procedures Are Less Effective for** 11 **the Subpopulations Most Impacted**

12 Defendants claim the Census Bureau’s NRFU procedures will cure the massive and
 13 differential decline in self-responses that will result from addition of the citizenship question.
 14 MSJ at 9-12. Defendants point to a variety of procedures designed to enumerate households that
 15 fail to self-respond, including up to six mailings, up to six in-person visits from enumerators,
 16 imputation of data derived from administrative records, and proxy responses obtained from
 17 neighbors. *Id.* Additionally, Defendants tout comprehensive advertising and outreach programs
 18 to educate and encourage self-response. *Id.* at 10. But these are the same strategies used with
 19 only limited success by the Census Bureau for decades. Evans Decl., ¶ 4, Exh. B at 15; see also,
 20 e.g., *Wisconsin*, 517 U.S. at 7-8 (Census Bureau “adopted a wide variety of measures to reduce
 21 the rate of error in the 1990 enumeration,” including a simplified questionnaire, increased use of
 22 automation, advertising campaigns targeting undercounted populations, and targeted assistance
 23 for non-English speaking residents). Apart from an increased use of automation for the 2020
 24 decennial census, Defendants do not point to any significant changes to the Census Bureau’s
 25 NRFU procedures at all, and certainly nothing that is designed to correct the massive differential
 26 decline in self response among non-citizen households that the Census Bureau admits will occur
 27 if the citizenship question is added or otherwise address the fear generated by the
 28 Administration’s aggressive immigration related policies and rhetoric.

1 All available evidence supports the same conclusion—the Census Bureau’s NRFU efforts
 2 will not completely succeed in negating the differential impact of adding the citizenship
 3 question—evidence which is uncontroverted by Defendants. As an initial matter, the Census
 4 Bureau acknowledges that the subpopulations most impacted by the addition of a citizenship
 5 question (e.g., non-citizen, immigrants, Hispanics, other minority groups) are also regarded as
 6 hard to count subpopulations. Evans Decl., ¶ 5 & Exh. C [NAC Admin Records Report] at 8-11.

7 According to the Census Bureau’s own focus/survey groups, there are rising concerns
 8 among these communities resulting from the current Administration’s widely publicized
 9 immigration enforcement policies. See, e.g., AR 1256; Escudero Decl. ¶ 14; Evans Decl., Exh. C
 10 at 8-11. These concerns are well recognized by Census Bureau officials.

11 A mandatory inquiry into citizenship status is all the more likely to engender
 12 privacy concerns, particularly among non-citizens. “The nuanced reasons for the
 13 question ... will of course be lost to millions upon millions of Americans. The
 14 question will be viewed with suspicion.” “[I]t is foolish to expect that census-
 taking is immune from anxieties that surround such issues as undocumented
 aliens, immigration enforcement, terrorism prevention, national identity cards,
 total information awareness, and sharp increases in surveillance generally.”

15 Brief of Former Directors of the U.S. Census Bureau as Amici Curiae in Support of Appellees,
 16 *Evenwel v. Abbott*, 2015 WL 5675832, *23-24 (U.S. 2015).

17 The Census Bureau further acknowledges that “[t]hose refusing to self-
 18 respond due to the citizenship question are particularly likely to refuse to respond in NRFU as
 19 well, resulting in a proxy response.” AR 1311; Evans Decl., ¶ 6 & Exh. D [Census Bureau FRCP
 20 30(b)(6) Depo. Transcript dated Oct. 5, 2018] at 451:3-9. But proxy responses are less accurate,
 21 more likely to result in an omission, and given the pervasiveness of the concerns among
 22 immigrant communities, enumerators will likely face the same reluctance to participate from
 23 proxies too. Evans Decl., Exh. D [Census Bureau Depo] at 382:22 to 383:5, 386:2 to 387:10,
 24 451:3-9, & 461:13-21. The Census Bureau’s reliance on administrative records is also
 25 problematic. The Census Bureau acknowledges that administrative records are less accurate, less
 26 complete, and less likely to exist at a far higher rate for the impacted subpopulations. Evans
 27 Decl., Exh. C at 8-11; Evans Decl., Exh. D [Census Bureau FRCP 30(b)(6) Depo. Transcript
 28 dated Oct. 5, 2018] at 389:17 to 391:4-392:4. In the aggregate, and despite the Census Bureau’s

1 best efforts, the addition of a citizenship question will result in an incremental increase in
2 omissions disproportionately affecting immigrant and Hispanic communities.

3 A known problem, which the Census Bureau acknowledges cannot be cured by NRFU,
4 arises when a member of a household responds to the census but deliberately omits non-citizen
5 household members in the response. Evans Decl., Exh. D [Census Bureau Depo] at 394:14-20, &
6 396:2 to 399:2. Because the Census Bureau receives a household response, it does not initiate
7 NRFU, and there is no procedure or protocol to recapture those uncounted individuals. *Id.*

8 An abundance of uncontroverted evidence, all from the Census Bureau itself,
9 acknowledges the inadequacy of NRFU to adequately enumerate the hard to count subpopulations
10 most directly impacted by the addition of the citizenship question, creating a substantial risk of a
11 differential undercount.

12 **B. The Substantial Risk of Loss of Any Federal Educational Funding to LAUSD**
13 **Confers Article III Standing**

14 LAUSD is the second largest school district in the country. Escudero Decl. ¶ 5. The
15 District’s enrollment for the 2017-18 school year included 513,592 students, 82% of which were
16 economically disadvantaged and 73% of which were Hispanic—averages far above the national
17 average. Escudero Decl. ¶ 4. By contrast, only 10% of LAUSD’s students are white. *Id.* Los
18 Angeles is home to one of the densest populations of foreign born persons in the country. And
19 for thousands of students, LAUSD is their *only* home. Escudero Decl. ¶¶ 6-12.

20 “A special relationship is formed between a school district and its students resulting in the
21 imposition of an affirmative duty on the school district to take all reasonable steps to protect its
22 students....Teaching and learning cannot take place without the physical and mental well-being of
23 the students. The school premises, in short, must be safe and welcoming.”” *M. W. v. Panama*
24 *Buena Vista Union Sch. Dist.*, 110 Cal.App.4th 508, 517, 1 Cal. Rptr. 3d 673, 679 (Cal. App. 5th
25 Dist. 2003), citations omitted. LAUSD is neither inclined nor legally permitted to turn its back on
26 undocumented students, some of its most vulnerable charges. See, *Plyer v. Doe*, 457 U.S. 202
27 (1982) (state law depriving undocumented students access to public education violates 14th
28 Amendment).

1 [T]he confluence of Government policies has resulted in “the existence of a large
2 number of employed illegal aliens, such as the parents of plaintiffs in this case,
3 whose presence is tolerated, whose employment is perhaps even welcomed, but
4 who are virtually defenseless against any abuse, exploitation, or callous neglect
5 to which the state or the state's natural citizens and business organizations may
6 wish to subject them.”

7 *Plyer*, 457 U.S. at 218 (quoting *Doe v. Plyer*, 458 F.Supp. 569, 585 (1978)). It is these District
8 students and their families who are most likely to be impacted by any differential undercount in
9 the 2020 decennial census resulting from the addition of a citizenship question.

10 Defendants acknowledge that federal funding is often tied directly to census population
11 data. Evans Decl., Exh. D [Census Bureau Depo] at 456:22 to 457:10. Any differential
12 undercount that impacts some States, localities, or school districts more than others will
13 necessarily also result in a differential funding loss. Defendants attempt to argue that the
14 potential loss in federal funding resulting from a differential undercount will be immaterial, with
15 funding levels “‘estimated to decline by 0.01% percent’ for Title I LEA grants....” (See, MSJ at
16 13-14, citing Gurrea Decl. ¶ 11.) Notably, Defendants offer no legal authority to support the
17 proposition that some quantum of financial injury is necessary to establish standing. Nor can
18 they. “[I]t is well settled that standing does not depend on the size or quantum of harm to the
19 party.” *Animal Welfare Inst. v. Kreps*, 561 F.2d 1002, 1008 (D.C. Cir. 1977). “Economic harm
20 to a business clearly constitutes an injury-in-fact. And the amount is irrelevant. A dollar of
21 economic harm is still an injury-in-fact for standing purposes.” *Carpenters Indus. Council v.*
22 *Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017).

23 LAUSD also disputes Defendants’ characterization of such losses as immaterial. When it
24 comes to public education, every dollar counts. “[T]here can be no doubt that public education is
25 among the state’s most basic sovereign powers. Laws that divert limited educational funds from
26 this core function are an obvious interference with the effective exercise of that power.” *Wells v.*
27 *One2One Learning Found.*, 39 Cal.4th 1164, 1194, 141 P.3d 225, 238 (Cal. 2006), as modified
28 (Oct. 25, 2006). For the 2017-18 school year, even a decline of 0.01% in Title I, Part A, funds as
projected by Defendants would have decreased LAUSD’s funding allocation by \$33,349.80.
Ryback Decl. ¶ 6. As Title IV, Part A, funds are based upon a proportional share of Title I

1 distributions, LAUSD’s Title IV funding would also be jeopardized. See 20 U.S.C.
2 § 7113(b)(1)(a). These concrete, particularized, and imminent economic injuries to LAUSD
3 would repeat every year for at least a decade. Far from being immaterial, Defendants’ estimated
4 decline in Title I funding of 0.01% effectively concedes that LAUSD will lose funding and has
5 sufficient standing to pursue its claims.

6 **III. CONCLUSION**

7 For the foregoing reasons, and based upon the evidence and arguments advanced by
8 Plaintiffs and joined herein, Defendant’s motion for summary judgment must be denied.

9 DATED: November 16, 2018

DANNIS WOLIVER KELLEY
SUE ANN SALMON EVANS
KEITH A. YEOMANS

11 By: /s/Sue Ann Salmon Evans
12 SUE ANN SALMON EVANS
13 Attorneys for Plaintiff-Intervenor
14 Los Angeles Unified School District

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